



# Education (Additional Support for Learning) (Scotland) Act 2004

## 2004 asp 4

### *Exchange of information*

#### **12 Duties to seek and take account of views, advice and information**

(1) In—

- (a) establishing in pursuance of any provision of this Act whether any child or young person—
  - (i) has additional support needs, or
  - (ii) requires, or would require, a co-ordinated support plan,
- (b) establishing in pursuance of a review carried out under section 10 whether any child or young person still requires a co-ordinated support plan,
- (c) preparing such a plan for any child or young person, or
- (d) determining in pursuance of section 4(1) what provision to make for such additional support as is required by any child or young person having additional support needs,

the education authority must comply with the duty described in subsection (2).

(2) That duty is a duty to—

- (a) seek and take account of relevant advice and information from such appropriate agencies and other persons as the education authority think appropriate,
- (b) subject to subsection (3), seek and take account of the views of—
  - (i) in the case of a child, the child (unless the authority are satisfied that the child lacks capacity [<sup>F1</sup>in relation to] a view) and the child's parent, and
  - (ii) in the case of a young person, that young person or, if the authority are satisfied that the young person lacks capacity to express a view, the young person's parent,
- (c) take account of any relevant advice or information provided to the authority by or on behalf of the child or young person concerned, and

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- (d) take account of any relevant advice and information in the authority's possession or control by virtue of any of their functions other than their functions relating to education.
- (3) In the cases mentioned in subsection (1)(a)(i) and (d), the duty described in subsection (2)(b) applies only in relation to such children and young persons as the authority consider appropriate.
- [<sup>F2</sup>(3A) Where any such co-ordinated support plan as is mentioned in section 10(1) is transferred to the education authority by virtue of regulations made in pursuance of section 11(8), the authority's duty under subsection (2)(a) includes a duty to seek and take account of information and advice (within such period as will enable the authority to comply with their duty under section 10(5A)) from the education authority from which the plan was transferred and any agencies or persons involved in providing support under the plan prior to its transfer.]
- (4) Advice or information is relevant for the purposes of subsection (2)(a), (c) or (d) if it is likely to assist the education authority in doing any of the things referred to in paragraphs (a) to (d) of subsection (1).
- (5) Every education authority must—
- (a) no later than 12 months before the date on which any child or young person—
    - (i) having additional support needs, and
    - (ii) for whose school education the authority are responsible, is expected to cease receiving school education, or
  - (b) where the education authority become aware that the child or young person is to cease receiving school education less than 12 months before that date, as soon as reasonably practicable after they become so aware,
- comply with the duty in subsection (6).
- (6) That duty is a duty to—
- (a) request from such appropriate agency or agencies as the authority think fit (if any) such information as the authority consider appropriate concerning any provision which the agency is or, as the case may be, the agencies are likely to make for the child or young person on ceasing to receive school education,
  - (b) where the authority make a request under paragraph (a), seek the views of—
    - (i) in the case of a child, that child (unless the authority are satisfied that the child lacks capacity [<sup>F3</sup>in relation to] a view) and the child's parent, or
    - (ii) in the case of a young person, that young person or, if the authority are satisfied that the young person lacks capacity to express a view, the young person's parent, and
  - (c) take account of—
    - (i) any information provided by any appropriate agency or agencies pursuant to a request under paragraph (a),
    - (ii) any views expressed by the child or young person or the child's or young person's parent pursuant to paragraph (b), and
    - (iii) any provision which the education authority themselves are, in the exercise of any of their functions other than their functions relating to education, likely to make for the child or young person on ceasing to receive school education,

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in considering the adequacy of the additional support to be provided for the child or young person during the period before the child or young person ceases to receive school education.

(7) Subsections (5) and (6) are without prejudice to section 4(1)(b).

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**Textual Amendments**

- F1** Words in s. 12(2)(b)(i) substituted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\), s. 33\(2\), sch. para. 11\(a\)](#); [S.S.I. 2017/354, reg. 2\(a\)](#)
- F2** S. 12(3A) inserted (14.11.2010) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 \(asp 7\), ss. 1\(6\), 26\(3\)](#); [S.S.I. 2010/277, art. 2](#)
- F3** Words in s. 12(6)(b)(i) substituted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\), s. 33\(2\), sch. para. 11\(b\)](#); [S.S.I. 2017/354, reg. 2\(a\)](#)
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**Commencement Information**

- I1** S. 12 in force at 14.11.2005 by [S.S.I. 2005/564, art. 2](#)

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